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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,601	01/20/2004	Michael W. McCarty	06005/39677	9950

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EXAMINER

BASTIANELLI, JOHN

ART UNIT PAPER NUMBER

3751

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/760,601

Applicant(s)

MCCARTY, MICHAEL W.

Examiner

John Bastianelli

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-29 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 11-16 is/are rejected.
- 7) ☒ Claim(s) 4-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/3/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. An IDS is missing citing the patents that were made of record in the parent application 10/360,668.

Title

2. Regarding applicant's request for the title change to include "improved", the term "improved" is not considered part of the title of an invention and is automatically deleted (See MPEP 606).

Claim Suggestions

3. In claim 3, line 3, before "wedging effect", --a-- should be included.
4. In claim 4, line 2, before "threaded portion", "the" should be --a--.
5. The claims are replete with minor errors like above. Please review the claims and correct all the errors.

Claim Objections

6. Claim 13 is objected to because of the following informalities: It is not understood where there is a "line of contact is formed on a substantially spherical surface having a radius". The examiner does not see spherical surface anywhere in the disclosure. Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 11-12, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawabe et al. 6,062,539.

Kawabe discloses a first rod adapter 5 having an undercut adjacent to a first shaped mating surface, a second rod adapter 3 having an undercut adjacent a second shaped mating surface, a rod union 7 for enclosing and mating the first and second mating surfaces at the undercuts with the rod union having an internal cavity with a first and second rim for receiving and retaining the first and second mating surfaces and prevents rotation of the first and second adaptors. The internal cavity is large enough to accommodate axial misalignment. The rod first rod adapter has an acute angle and creates a wedging effect. The line of contact is at a first angle greater than 40 degrees and the rod union tapered surface is tapered at an angle equal to the first angle. The rod union has an upper and lower thrust surface approximately perpendicular to the longitudinal axis of the first rod adapter.

9. Claims 1-3, 11-12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bernard FR 2558904.

Bernard discloses a first rod adapter 4 having an undercut adjacent to a first shaped mating surface, a second rod adapter 5 having an undercut adjacent a second shaped mating surface, a rod union (6, 7, 8) for enclosing and mating the first and second mating surfaces at the undercuts

Art Unit: 3751

with the rod union having an internal cavity with a first and second rim for receiving and retaining the first and second mating surfaces and is seen to prevent rotation of the first and second adaptors. The internal cavity is large enough to accommodate axial misalignment. The rod first rod adapter has an acute angle and creates a wedging effect. The line of contact is at a first angle greater than 40 degrees and the rod union tapered surface is tapered at an angle equal to the first angle. The rod union has an upper and lower thrust surface approximately perpendicular to the longitudinal axis of the first rod adapter.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 13, as understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Kawabe et al. 6,062,539.

Kawabe lacks a line of contact having a spherical surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a spherical surface as a matter of design choice, since it has been held that a change in the shape of an element involves only routine skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1966).

12. Claim 13, as understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard FR 2558904.

Art Unit: 3751

Bernard lacks a line of contact having a spherical surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a spherical surface as a matter of design choice, since it has been held that a change in the shape of an element involves only routine skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1966).

Allowable Subject Matter

13. Claims 4-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claims 17-29 are allowed.

15. The following is a statement of reasons for the indication of allowable subject matter: The primary reason for allowance of the claims is the second rod adapter having a threaded portion therethrough wherein adjustment of the second rod adapter on a second rod permits a predetermined length of the second rod to protrude through the second rod adapter in combination with the device as cited in claim 1.

16. The examiner request that the applicant supply the page and line #'s of the means plus function of claims 15 and 27 to include in the reasons for allowance for invoking 112 6th.

Conclusion


17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Trautwein, Kubota, and Siver disclose first and second adaptors with a rod union.

Art Unit: 3751

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Bastianelli whose telephone number is (571) 272-4921. The examiner can normally be reached on M-F (9:00-6:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John Bastianelli
Primary Examiner
Art Unit 3751



JB
December 14, 2004